

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION TWENTY-SIX**

**TIME WARNER CABLE, MID-SOUTH DIVISION,  
A DIVISION OF TIME WARNER  
ENTERTAINMENT CO., L.P.,  
AN AOL TIME WARNER COMPANY<sup>1</sup>**

Employer

**and**

**Case 26-RC-8330**

**COMMUNICATIONS WORKERS OF AMERICA  
LOCAL 3806, AFL-CIO<sup>2</sup>**

Petitioner

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**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

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The Employer, Time Warner Cable, Mid-South Division, A Division of Time Warner Entertainment Co., L.P., an AOL Time Warner Company, is engaged in the installation, operation, and maintenance of cable television services. The Petitioner, Communications Workers of America Local 3806, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act. The petition, as amended, seeks a unit consisting of all full-time technicians, including construction technicians, customer technicians, maintenance technicians, head-end technicians, and installers working under the jurisdiction of the Memphis, Tennessee office which would include the technicians who work in West Memphis, Arkansas, northern

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<sup>1</sup> The Employer's name appears as amended at hearing.

<sup>2</sup> The Petitioner's name appears as amended at hearing.

Mississippi, and Somerville<sup>3</sup>, Tennessee. Following a hearing before a hearing officer of the Board, the parties filed briefs with me.

The issues raised in the hearing and addressed in the briefs involve the placement of 25 dispatchers and technical assistance center (TAC) employees and 11 construction project specialists (CPS). The Employer contends that both groups of employees should be included in the unit of 141 employees sought by the Petitioner. Conversely, the Petitioner opposes the inclusion of these two employee groups.

I have considered the evidence adduced during the hearing and the arguments advanced by the parties. As discussed below, I have concluded that both the dispatch/TAC employees and the CPS share a sufficiently strong community of interest with employees in the petitioned-for unit and therefore should be included in the unit. Accordingly, I have directed an election in a unit consisting of approximately 177 employees. To provide a context for my discussion of those issues, I will first provide an overview of the Employer's operation and supervisory structure. Then, I will discuss the evidence regarding community of interest and the reasoning that supports my finding that CPS and dispatch/TAC employees should be included in the unit.

## **I. OVERVIEW OF EMPLOYER'S OPERATIONS AND SUPERVISORY STRUCTURE**

The Employer provides CATV services, digital cable TV, digital audio, and high-speed data to a geographical customer base, which encompasses an approximately 148-mile radius, including areas in North Mississippi, West Tennessee and Eastern Arkansas. As part of its operations, the Employer maintains a master control center and master call

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<sup>3</sup> Spelled "Summerville" in record.

center from which the Employer's network system signals are processed. Additionally, the Employer maintains a field operation center (FOC) where its warehouse, converter issuing, and fuel facilities are housed.

The Employer's operations are divided into four departments: Engineering and Technology; Marketing; Finance; and Customer Operations. Each department is headed by a vice president who reports to Division President Dean Deyo.

All employees in the petitioned-for unit, as well as all employees in the two disputed classifications, are in the Engineering and Technology department which is headed by Vice President Dan Shackelford. Shackelford is responsible for the technical staff and the Employer's entire outside network, including all the internal components for processing the products sold on the network. His office is located at the Employer's FOC.

The Engineering and Technology Department is divided into four areas or divisions: system engineering; outside plant; technical operation; and residential services. Each area or division is supervised by a director who reports directly to Shackelford.

Director of System Engineering Scott Young is responsible for the head-end technicians and dispatch/TAC employees. Reporting directly to Young are Keith Fisher, immediate supervisor of the TAC employees; Jeff Armor, supervisor of the dispatchers; and Mike Jones, supervisor of a combination of customer technicians and maintenance technicians.

Director of Outside Plant Keith Bell is responsible for the construction technicians and the CPS. Four supervisors report directly to Bell: Construction Manager Bobby Mullen, supervisor of the construction technicians; Tracy Finley, supervisor of the CPS; Mike Taylor, supervisor of the maintenance technicians; and Don Lung, technical

operations manager for Somerville and West Memphis and immediate supervisor for customer technicians in those locations.

Ward Wimbish oversees technical operations and has overall responsibility for the Memphis customer technicians and the three customer technicians who work from their homes in Mississippi. Reporting directly to Wimbish is Senior Manager Henry Sutherland. Reporting to Sutherland are the direct supervisors for the customer technicians: Brad Johnston; Carolyn Taylor; Jim Cox; Kevin Henry; and Greg Echols.

Finally, Craig Altepeter is Director of Residential Services. He has overall responsibility for the installers. Reporting to Altepeter is Manager Ricky Smith, who is in charge of contractor installations, and five supervisors who directly supervise the installers: Warren Davis; Dwight Davis; Vivian Draper; Mitchell Saddler; and Gerald Bullard.

## **II. COMMUNITY OF INTEREST**

The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. In determining whether the employees in the unit sought possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours, and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. *The Boeing Company*, 337 NLRB No. 24 (2001) (citations omitted). Accordingly, I will first discuss the job duties and functions of each classification and then the evidence regarding the other factors.

**A. Job Duties and Functions**

Installers: The approximately 50 installers are primarily responsible for installing, altering, or disconnecting cable television services in customers' homes. Their job duties also include educating customers about products and services. Installers, like most of the other employees, are also expected to sell customers additional products, such as upgrades.

Customer technicians: The approximately 65 customer technicians, also referred to as service technicians, compose the largest group of technical employees. Four customer technicians who work in West Memphis, Arkansas, five who work in Somerville, Tennessee, and three who work from their homes in Mississippi are referred to as outlying customer technicians. The other customer technicians are located in Memphis.

The primary function of the customer technicians is to analyze, locate, and repair technical problems affecting the quality of video reception in a customer's home. Customer technicians also assist installers in various circumstances, such as when the installers have difficulty correcting a problem. As with all employees, the customer technicians are expected to sell additional products to the customer.

The outlying customer technicians generally perform the same functions as the customer technicians based in Memphis. However, since no maintenance technicians are assigned to these outlying areas, the outlying customer technicians also perform functions typically performed by maintenance technicians such as responding to system outage interruptions.

Maintenance Technicians: The maintenance technicians are primarily responsible for monitoring the network to prevent minor problems from escalating into major ones. In certain instances they are able to detect problems before the customer does. Once a

problem is detected, the maintenance technician is responsible for correcting it. Because of the nature of their work, maintenance technicians work closely with the construction technicians. Collectively, there are approximately 20 maintenance and construction technicians.

Construction Technicians: While the work of the maintenance technician is primarily preventive, the construction technician's work is more restorative. In that regard, the construction technician's primary responsibility involves restoring cable plants. For example, if a pole is knocked down as a result of an automobile accident, the construction technician will replace the plant that was knocked out because of the accident. The construction technicians also work with the police, movers and other entities to move the cable plant when a house is being relocated. Whenever a maintenance technician detects a problem such as a broken sheath, or a cable that needs to be replaced or spliced, a construction technician works with the maintenance technician to correct the problem. In addition to the foregoing duties associated with existing plants, the construction technicians also works with the CPS in the activation process of new plants.

Head-End Technicians: The six head-end technicians work at the Employer's master control center. At the master control center, a series of satellite dishes receive a signal from satellites and then process and distribute the signal through a series of modulators onto the Employer's fiber optic network. The head-end technicians are responsible for keeping the signal intact 24 hours a day, 365 days a year and ensuring that the signal is at the level required by the FCC and the Employer. Thus, it is their responsibility to ensure that the technical quality of the cable programming is received.

Dispatch/TAC employees: The dispatch/TAC employees include 13 individuals who occupy dispatcher positions and 12 who occupy TAC positions. Despite the different titles, the two positions work side by side and perform essentially the same job functions and use the same type of equipment. However, one difference between the two positions is that dispatchers do not coordinate outages while that is a primary function of a TAC employee.

The vice president of Engineering and Technology described the dispatch/TAC employees as the “nerve center” of the technical process. These employees are primarily responsible for the daily scheduling of service calls into the service pool, monitoring the service pool, and routing service calls to customer technicians.

Dispatch/TAC employees spend considerable time speaking with customers both in receiving initial reports of customer problems and in follow-up contact with customers. The follow-up contacts are to determine if services are still needed or have been performed. A limited amount of the dispatch/TAC employees’ time is spent trying to sell additional products, such as upgrades, to the customer.

Construction Project Specialists: The 11 CPS are primarily responsible for strand mapping new subdivisions to determine the most expedient or efficient manner to prepare the area for cable services. They go to the site and measure the width and depth of the building lots and determine the best means to bring cable plant into that neighborhood. They also use a fiberglass measuring stick to measure from the ground to the aerial poles. After completing their measurements in the field, the CPS revise and submit their field notes to the Employer’s design/drafting group which designs the cable network for the area. The CPS also complete a permit form to apply to add attachments to the utility poles.

Once the design and drafting work is completed, the CPS orders the materials for the project based on a bill of materials generated by the design and drafting team. The actual construction work is performed by an outside contractor, but is monitored by the CPS on a daily basis. In connection with these duties, the CPS interact with developers and various governmental entities. The CPS is responsible for a project until completion. The CPS, like construction and maintenance technicians, are responsible for monitoring and measuring signal leakage. The CPS also sell new services and upgrades to customers.

### **B. Wages and Benefits**

Except for the construction technicians who are salaried, all the employees are hourly paid within similar ranges. For example, the maintenance technicians and the CPS are paid between \$12 and \$18 an hour and the customer technicians are paid between \$12.14 and \$18 an hour. The dispatch/TAC employees earn between \$10.14 and \$16 an hour, while the installers are paid between \$10.14 and \$14.66 an hour. Any of these employees who successfully passes a required training course receives a 25-cent-an hour wage increase. All employees also receive the same employee benefits package, including incentives for selling additional products.

### **C: Hours of Work**

Except for the dispatch/TAC employees who work 7 days a week on 24-hour shifts and three maintenance technicians who work an evening shift until about 10 or 11 p.m., the other employees work shifts that start between 7 a.m. and 10 a.m. and end between 4 p.m. and 7 p.m. Some employees, such as the head-end technicians and the outlying customer technicians, are also on call in addition to their regular shift assignments. The head-end technicians, maintenance technicians, and the CPS work 5 days a week, while the installers

work 6 days a week. The customer technicians and dispatch/TAC employees work 7 days a week. Under certain conditions, such as backlogs and severe weather, employees may be required to work overtime. All employees are responsible for keeping their time records.

#### **D. Other Working Conditions**

The installers, maintenance technicians, construction technicians, Memphis-based customer technicians, and the CPS all work out of the FOC. Except for two employees who work at the FOC on a rotating basis, the dispatch/TAC employees work at the Employer's master control center. The head-end technicians also work at the master control center.

#### **E. Commonality of Supervision**

All the employees are under the overall supervision of Engineering and Technology department vice president Dan Shackelford and share a common human resources manager, Kimmy Ingram. In addition, the dispatch/TAC employees and the head-end technicians are under Director of System Engineering Scott Young. The construction technicians, maintenance technicians, and the CPS are under the supervision of Director of Outside Plant Keith Bell.

#### **F. Degree of Skills**

Customer technicians and dispatch/TAC employees engage in troubleshooting customer problems. This process requires the ability to detect or diagnose a problem and knowledge of appropriate corrective action. The process is the same, whether undertaken face-to-face with the customer by a customer technician, or over the telephone by a dispatch/TAC employee or customer technician.

All employees are required to have the skills necessary to use computers, read maps, and work with little direct supervision. All employees receive the same type of training, whether it is product training provided by the Employer or training through the National Cable Training Institute.

#### **G. Employee Interchange and Contact**

Lateral moves and temporary substitutions are not uncommon among the employee groups. For example, most of the dispatch/TAC employees moved from maintenance technicians to their current positions. All the CPS previously held either a maintenance position or a customer tech position. The customer technicians, maintenance technicians, dispatch/TAC employees, and the CPS substitute for one another as the Employer's needs dictate. When customer technicians are on light duty, they often work as a dispatch/TAC employee and use their troubleshooting knowledge to assist in resolving customer problems.

Employees also come into contact with each other in performing their daily duties. The dispatch/TAC employees regularly come in contact with the customer technicians and installers. The customer technicians receive their service calls from the dispatch/TAC employees. Prior to the service call, either the dispatch/TAC employee or the customer technician contacts the customer to confirm the scheduled service call and determine if the problem can be resolved by troubleshooting. The installers also work closely with the dispatch/TAC employees in customer scheduling matters. Customer technicians periodically perform the same duties as the installers. To ensure that dispatch/TAC employees remain abreast of the various processes utilized in the field, dispatch/TAC

employees are required to ride in the field with customer and maintenance technicians every six months.

Since the CPS are responsible for a new project from the planning to the implementation or activation stage, they work closely with the construction technicians and the maintenance or outside plant technicians in the activation of the project. Outside contractors typically are not involved in the activation process. Currently, the CPS and construction technicians are working together on more than half of the Employer's 30 current construction projects.

The CPS also work with dispatch/TAC in handling inquiries from homeowners moving into a subdivision where the plant is under construction. These homeowners are often routed through **dispatch/TAC** which has access to a database that shows the status of construction in some of the subdivisions. If that database is not up-to-date, the dispatch/TAC would ask the CPS to advise the customer on the progress of construction. Sometimes if the dispatch/TAC knows that a CPS is in the subdivision, they will arrange for the customer to meet the CPS at the site.

### III. ANALYSIS

The Petitioner correctly argues in its brief that the Act does not require that the petitioned-for unit be the "most appropriate" unit. Moreover, I am cognizant of the fact that the unit sought by the petitioner is always a relevant consideration in a representation proceeding. See, *Overnite Transportation Co.*, 322 NLRB 723 (1996); *Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994); *Dezcon, Inc.*, 295 NLRB 109 (1989). Notwithstanding the foregoing, in deciding whether a petitioned-for unit is an appropriate unit the Board's focus is on whether the employees share a community of interest. *Home*

*Depot USA, Inc.*, 331 NLRB No. 168, slip op. at 2 (2000); *The Boeing Company*, 337 NLRB No. 24 (2001).

The Employer and the Petitioner agree that the installers, customer technicians, maintenance technicians, construction technicians, and head-end technicians should be included in the unit. As described above, the CPS and dispatch/TAC employees share similar wages and work at the same locations with the employees in the agreed-upon classifications. All the employees are part of the same department and share common supervision. In addition, there is significant interchange between the agreed-upon employees and the CPS and dispatch/TAC employees since all the CPS previously held a unit position and most of the dispatch employees previously worked in a unit position. While apparently acknowledging that the dispatch and the CPS are functionally integrated with the employees in the petitioned-for unit, the Petitioner nonetheless opposes their inclusion. The Petitioner argues that the dispatch/TAC employees do not engage in the mobile physical work performed by the petitioned-for employees. While this is correct, I do not find that difference alone is sufficient to overcome the other significant and strong evidence of community of interest.

The Petitioner argues that the CPS are planners rather than technical employees who only have incidental contact with construction technicians and dispatch. While some of the duties of the CPS are somewhat different from other employees in that they measure and plan new services, their skills and knowledge are similar and they have regular contact with the construction technicians who must be involved when new service is activated. They are also functionally integrated with the other employees as their work represents the first step in serving new customers. In addition, all the CPS previously held other unit

positions. Moreover, the CPS monitor and measure signal leakage which are job functions performed by employees in the agreed-upon unit. Finally, the CPS receive the same type of training as the other employees and substitute for other employees in the unit.

In view of the undisputed evidence of the functional integration, skills, interchange, wages and benefits, hours, and other terms and conditions of employment between the dispatch/TAC employees and the employees in the petitioned-for unit, I find the Petitioner's argument unpersuasive. For these same reasons, I also reject the Petitioner's argument opposing the inclusion of the CPS in the unit. I will therefore include both the CPS and the dispatch/TAC employees in the unit found appropriate here.

## **V. CONCLUSION AND FINDINGS**

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

**INCLUDED:** All full-time technicians, including construction technicians, customer technicians, maintenance technicians, head-end technicians, installers, construction project specialists,

dispatchers, and TAC employees working under the jurisdiction of the Memphis, Tennessee office, including the technicians who work in northern Mississippi, West Memphis, Arkansas, and Somerville, Tennessee.

**EXCLUDED:** All other employees, including sales employees, office clerical and professional employees, guards, and supervisors<sup>4</sup> as defined by the Act.

## **VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Communications Workers of America Local 3806, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

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<sup>4</sup> The parties stipulated and I find that the following individuals are supervisors within the meaning of Section 2(11) of the Act: Dan Shackelford, Scott Young, Keith Bell, Ward Wimbish, Craig Altepeter, Keith Fisher, Jeff Armor, Mike Jones, Tracy Finley, Bobby Mullen, Mike Taylor, Don Lung, Henry Sutherland, Brad Johnston, Carolyn Taylor, Jim Cox, Kevin Henry, Greg Echols, Warren Davis, Dwight Davis, Vivian Draper, Mitchell Saddler, and Gerald Bullard. Although the parties also stipulated that Bob Allen and Ricky Smith are supervisors, I decline to find they are supervisors since the record indicates that they do not

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

**B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **July 23, 2002**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the

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supervise any of the Employer's employees. However, since the evidence fails to establish that they share a community of interest with the employees in the unit found appropriate, I shall exclude them from the unit.

filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (901) 544-0008. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

**C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

**VII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **July 30, 2002**. The request may **not** be filed by facsimile.

Dated at Memphis, Tennessee, this 16th day of July 2002.

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Ruth E. Small, Acting Regional Director  
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Memphis, TN 38104-3627

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